PETROLERO CORP.

IBLA 81-277 Decided November 16, 1981

Appeal from decision of Wyoming State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease W 45272 and holding the lease to have terminated.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

An oil and gas lease terminated by operation of law for failure to pay the advance rental on or before the anniversary date may be reinstated only upon a showing that the failure to pay on time was either justifiable or not due to lack of reasonable diligence. The fact that appellant's employee mistakenly sent the courtesy notice to a corporation which was the assignee for part of the lease does not justify late payment.

APPEARANCES: Robert Swendson, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Petrolero Corporation (Petrolero) appeals from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated December 15, 1980, denying its petition for reinstatement of oil and gas lease W 45272 and holding that the lease terminated by operation of law when payment of the annual rental was not received on or before the anniversary date of the lease.

The lease in question issued effective November 1, 1974, and was subsequently assigned to appellant. There was a partial assignment of this lease from appellant to the Louisiana Land and Exploration Company (LL&E) which was approved by BLM on January 1, 1980. Annual rental on

the lease was due in the BLM office on or before November 1, 1980, in the amount of $753.50. Appellant's check dated November 10, 1980, was received by BLM on November 14, 1980.

In its petition for reinstatement, appellant contends LL&E's Denver office apparently received the notice of rental payment due; that the Denver office sent the notice to LL&E's New Orleans office which sent it back to the Denver office; that the Denver office sent the notice to Petrolero after the November 1, 1980, deadline had passed; that Petrolero had depended on LL&E for assistance, but because of the size and separation of authority within that company, LL&E did not operate in a timely manner.

In its decision denying the petition for reinstatement, BLM found that appellant's failure to pay on or before the anniversary date of the lease was not justifiable or due to lack of reasonable diligence. BLM explained, inter alia, that a lessee may not rely upon the bulk and/or complexity of its business organization as to make "justifiable" an action which would not be held to be justifiable for an individual lessee.

On appeal appellant reiterates the contentions made in its petition for reinstatement. Appellant adds that the rental notice was sent to Petrolero in early October; that a clerk handling the notices was aware that Petrolero had assigned part of its lease to LL&E which bore the same Federal lease number as appellant's lease; that she thought that Petrolero no longer owned lease W 45272 and sent the notice to LL&E; that "the bulk and/or complexity of its business organization" refers to LL&E and not Petrolero; that not granting reinstatement because of the actions of a third party, LL&E, works a hardship on appellant.

[1] An oil and gas lease terminated for failure to pay annual rental on or before the anniversary date may be reinstated only if the failure to pay timely was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1970). Reasonable diligence requires mailing the rental payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the mail. 43 CFR 3108-2.1(c)(2). Mailing the payment after it is due does not constitute reasonable diligence. Melbourne Concept Profit Sharing Trust, 46 IBLA 87 (1980); Gilbert Mark Castillo, 36 IBLA 32 (1978). Apostolos Paliombeis, 30 IBLA 153 (1977). Thus, because appellant admits that it mailed its rental payment after it was due, appellant cannot show that the failure to pay timely was despite reasonable diligence on its part. It remains to determine whether appellant has demonstrated that its failure to pay timely was justifiable.

Failure to pay rental timely is justifiable only when it is caused by factors outside the lessee's control which were the proximate cause of the failure. International Resource Enterprises, Inc., 55 IBLA 386 (1981); Melbourne Concept Profit Sharing Trust, supra at 90; Gilbert Mark Castillo, supra at 33. See Ramoco, Inc. v. Andrus, 649 F.2d 814 (10th Cir. 1981).

We do not believe that appellant has provided adequate justification for late payment. Appellant states that there was confusion concerning the notice for payment because of the partial assignment of the lease. Appellant points to the internal procedures of LL&E as the cause for delay in paying the rental. The facts show, however, that it was appellant's office procedures which initially caused the problem. Appellant states that the clerk handling the delay rentals, who was aware of the assignment of LL&E, mistakenly sent the notice to LL&E. Presumably, the clerk's review of the notice should have triggered payment of the rental, either by the clerk or whoever was responsible within appellant's office structure. The complexities of appellant's business operations do not make its actions justifiable when they would not be so if committed by an individual lessee. Fuel Resources Development Co., 43 IBLA 19, 22-23 (1979). See Serio Exploration Co., 26 IBLA 106 (1976); James Donoghue, 25 IBLA 280 (1976); Monturah Co., 10 IBLA 347 (1973), dismissed without prejudice sub nom. Pashayan v. Morton, Civ. No. F-74-5-Civ. (E.D. Cal. Apr. 11, 1974).

It was the negligence of appellant's clerk which caused the notice to be sent to LL&E which in turn caused the failure to pay timely the rental. The Board has repeatedly held that mere inadvertence or negligence of the lessee's employee is not sufficient justification to reinstate a lease terminated for failure to make a timely rental payment. Phillips Petroleum Co., 29 IBLA 114 (1977); Serio Exploration Co., supra. In Samuel J. Testagrossa, 25 IBLA 64 (1976), the Board held that appellant's failure to pay timely the rental was not justifiable where the courtesy notice, misplaced by an employee, was not discovered until the day before the due date. Neither can appellant's employee's confusion, due to the fact that part of the lease had been assigned, make the late payment justifiable. See International Resource Enterprises, Inc., supra at 389.

In addition, the fact that LL&E did not return the courtesy notice to appellant until after payment was due does not relieve appellant of responsibility for making timely payment. Its obligation to pay on or before the anniversary date of the lease arises from the terms of the statute, not from receipt of a courtesy notice from the Bureau of Land Management. Samuel J. Testagrossa, supra at 65; Levi T. Bellah, 22 IBLA 1 (1975); L. P. Weiner, 20 IBLA 336, 338 (1975).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Anne Poindexter Lewis
Administrative Judge